



DEPARTAMENTO DE
SALUD
GOBIERNO DE PUERTO RICO

PUBLIC WATER SUPPLY SUPERVISION PROGRAM

FAX COVER



Date : August 21, 2000

Num. of Pages : (many)

To : Mike Lowy

Location : EPA Region 2

From : Oreida Santiago

Subject : PR- Primacy Revision Application Package

Message

There are changes in:

① State Primacy Checklist

② SAO (1st page, 3rd page)

Additional information:

① Action Plan for Disasters

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**COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY**

August 21, 2000

Ms. Jeanne Fox
Regional Administrator
United States Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Dear Ms. Fox:


Re: Puerto Rico - Primacy Revision Application Package

Enclosed herewith a Primacy Revision Application Package for approval of program revision to adopt new or revised EPA regulations pursuant Section 1413 of the Safe Drinking Water Act Amendments and 40 CFR Part 142, Subpart B. The package covered the following new or revised regulations: Primacy Revisions (PWS definition, Administrative Penalty Authority, circumstances requiring emergency plans for provision of Safe Drinking Water) and Consumer Confidence Report (CCR) Rule.

The package contains the document necessary (pursuant to section 142.11) to update the approved State primacy program. The Attorney General's statement certifies that the laws and regulations adopted were duly adopted and are enforceable.

If you have any doubts, please do not hesitate to contact me at (787)- 754-6650/6370.

Cordially,


Olga I. Rivera
Director
Public Water Supply
Supervision Program

*Commissioner's
Secretary*

Enclosure:

cc: Carmen Feliciano-Secretary of Health; Hernán Horta-Aux. Sec. Environmental Health; Carl A.P. Soderberg-CEPD; Jorge Martínez-CEPD

PO BOX 70184 SAN JUAN, PUERTO RICO 00936

DEPARTMENT OF HEALTH
AUXILIARY SECRETARIAT OF
ENVIRONMENTAL HEALTH

Puerto Rico
Primacy Revision Application Package

PUBLIC WATER SUPPLY SUPERVISION PROGRAM
AUGUST 21, 2000

Draft

August , 2000

Ms. Jeanne M. Fox
Regional Administrator
United States Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Re: Puerto Rico's Primacy Revision Application-Drinking Water

Dear Ms. Fox:

The Puerto Rico Department of Health (PRDOH) has requested my opinion regarding the legal authority that such agency has to adopt the new amendments introduced in 1996 by P. L. 104-182¹ to the Safe Drinking Water Act² (SDWA) and if DOH has duly adopted them and are enforceable.

This request is pursuant to the requirements established in Section 142.12 of the Title 40 of the Code of Federal Regulation (CFR) "to retain primary enforcement responsibility (Primacy)". The State Programs have to complete and request for approval, of program revisions undertaken in order to adopt all new and revised national primacy drinking water regulations promulgated in part 141 of the CFR. This primacy revision has to be submitted to the Environmental Protection Agency no later than two (2) years after promulgation of the new or revised federal regulation, unless an extension request has been granted.

The following new or revised regulations have been recently promulgated by EPA:

- Primacy revisions (Administrative Penalty Authority, circumstances requiring emergency plans for provision of Safe Drinking Water, PWS definition)
- Consumer Confident Report (CCR) Rule

¹ 42 USCA 300j-12 (Cum. Sup. 1999)

² 42 USCA 300f et. seq.

Ms. Jeanne M. Fox
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August , 2000

Based on the federal requirements, please be advised that in my opinion:

- (i) Act No. 5, approved on July 21, 1977, known as the Act to Protect the Purity of Drinking Water of Puerto Rico³, gave the Secretary of Health of Puerto Rico the authority to protect the purity of the drinking water in Puerto Rico and authorized him to establish the maximum contaminant levels for drinking water through appropriate regulations. According to the criteria established by the Administrator of EPA.

The Regulation No. 50⁴, known as "To protect the purity of the drinking waters of Puerto Rico", and its amendments were promulgated and have been in force since 1983 up to 2000 in order to comply with Act. No. 5 and to carry on its responsibilities as a state agency with Primacy.

PRDOH administers the Public Water Supply Supervision Program (PWSS) pursuant to Section 1413 of the SDWA and the delegation of primacy enforcement authority from EPA, dated March 1, 1980.

- (ii) Act No. 5 was amended by Act No. 193 approved December 26, 1997, which the PRDOH would continue with its primacy responsibility of protecting the public health of the people of Puerto Rico.

On February 4, 2000, Puerto Rico Department of State approved the General Regulation of Environmental Health⁵ (The General Regulation). This regulation is effective since March 6, 2000. Chapter I, Article V of the General Regulation of Environmental Health derogates the Regulation No. 50.

Chapter II Article II of the General Regulation Section 1.01 to 1.03 adopts by reference the 40 CFR Parts 141, 142 and 143. Section 1.04 is regarding the provisions of the Drinking Water State Revolving Fund (DWSRF). Section 1.05 is regarding the variances and exemptions according to 40 CFR Part 141.4 and Section 1.06 provides faculty to the Secretary of Health to be more stringent than the federal regulation or add any relevant requirement.

Therefore, I certify, pursuant to my authority as Attorney General and in accordance with the SDWA and the laws of the Commonwealth of Puerto Rico, that the Puerto Rico Department of Health has the legal authority for the above regulations and these have been duly adopted and are enforceable.

Sincerely,

Angel Rotger Sabat
Attorney General

³ 12 L.P.R.A. Sec 1551 et seq., Cum. Sup.

⁴ Regulation No. 50, June 20, 1983

⁵ Regulation No. 6090

PUERTO RICO PRIMACY REVISION APPLICATION PACKAGE

Puerto Rico administers the Public Water Supply Supervision (PWSS) Program pursuant to Section 1413 of the Safe Drinking Water Act (SDWA) and the delegation of primacy enforcement authority from the Environmental Protection Agency (EPA), dated March 1, 1980.

Section 142.12 (e) of the Code of Federal Regulations (CFR) explains that the State already having primacy for all existing National Primary Drinking Water Regulations (NPDWR) in effect when a new regulation is promulgated is considered to have interim primacy for a new or revised regulations, during the period in which EPA makes the determination with regard to the new or revised regulation. The interim enforcement authority begins on the date the primacy revision application is submitted in complete and final form or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a final determination.

Revision of State Programs

This request is submitted for approval of the program revision following procedures outlined in 40 CFR 142.12 (b) to (d). State must submit a primacy revision application following procedures:

§ 142.12 (b) Timing of state requests for approval of program revisions to adopt new or revised Federal Regulations

Through this document Puerto Rico PWSS Program submits a combining primacy revision application for the following new or revised regulations that EPA has been recently promulgated.

- Primacy revisions
 - Administrative Penalty Authority
 - Circumstances requiring emergency plans for provision of Safe Drinking Water
 - Public Water System definition
- Consumer Confidence report (CCR) Rule

§ 142.12 (b) Contents of a State request for approval of program revision

This application contains the following sections:

1. State Primacy Revision Checklist
2. Text of the State Regulation
3. Primacy Revision Crosswalk
4. State Reporting and Recordkeeping Checklist
5. Attorney General's Statement of Enforceability

1. State Primacy Checklist

This section is a checklist of program elements from 40 CFR 142.10 that the State has revised in response to the new rules.

The programs elements revised in response to new federal requirements were identified. For those items mark as YES, the specific information/documentation were included. Last column was intentionally blank for EPA review process.

Required Program Elements		Revision to State Program (Yes or No)	EPA Findings/ Comments
§ 142.10	Primary Enforcement		
§ 142.10 (a)	Has adopted drinking water regulation which are no less stringent than the NPDWRs in effect under part 141 of this chapter	Yes. Through the General Rule of Environmental Health (See attachment) all federal requirements are adopted by reference. See Attorney General's Opinion	
§ 142.10 (b) (1)	Maintenance of an inventory of public water systems	NR	
§ 142.10 (b) (2)	A systematic program for conducting sanitary surveys of public water systems in the State, with priority given to sanitary surveys of public water systems not in compliance with State primary drinking water regulations.	NR	
§ 142.10 (b) (3)	The establishment and maintenance of State program for the certification of laboratories conducting analytical measurements of drinking water contaminants.	NR	
§ 142.10 (b) (4)	Assurance of the availability to the State of laboratories facilities certified by the Administrator	NR	
§ 142.10 (b) (5)	The establishment and maintenance of an activity to assure that the design and construction of new or substantially modified PWS will be capable of compliance with the State primary drinking water regulations.	NR	
§ 142.10 (b) (6) (i)	Statutory or regulatory enforcement authority adequate to compel compliance with the State primary drinking water regulations in appropriate cases.	Yes. See Attorney General's Opinion	
§ 142.10 (b) (6) (ii)	Authority to Sue in Courts of Competent Jurisdiction	NR	
§ 142.10 (b) (6) (iii)	Right of Entry	NR	
§ 142.10 (b) (6) (iv)	Authority to require records	NR	
§ 142.10 (b) (6) (v)	Authority to require public notification	NR	
§ 142.10 (b) (6) (vi)	Authority to Assess Civil and criminal penalties	Yes. See Attorney General's Opinion	
§ 142.10 (b) (6) (vii)	Authority to require CWSs to provide Consumer Confidence Reports	Yes. See Attorney General's Opinion	
§ 142.10 (c)	The establishment and maintenance of record keeping	NR	
§ 142.10 (d)	Variances and exemptions Conditions	NR	

Required Program Elements		Revision to State Program (Yes or No)	EPA Findings/ Comments
§ 142.10 (e)	Adoption and implement an adequate plan for the provision of safe drinking water under emergency circumstances.	Yes. And unofficial translation of Action Plan for Disaster is included.	
§ 142.10 (f) (1)	Adoption authority for assessing administrative penalties unless the constitution of the State prohibits the adoption of such authority	Yes, a State Administer Order is Included.	
§ 142.10 (f) (2)	Establishment a maximum administrative penalty per violation that may be assessed on a PWS	Yes, a State Administer Order is Included.	

NR = not revised

2. Text of the State's Regulation

On February 4, 2000, Puerto Rico Department of State approved the *Reglamento General de Salud Ambiental* (General Regulation of Environmental Health that fully adopts by reference the 40 CFR 141, 142 and 143.

3. Primacy Revision Crosswalk

Identification of the State statutory or regulatory provisions that correspond to each federal requirement under 40 CFR 141 should be included in this section.

Federal Requirement 40 CFR	Federal Citation	State Citation Document title; page number; and section paragraph	Explanation, if different than federal requirement
National Primary Drinking Water Regulations	Part 141	General Regulation of Environmental Health Chapter II, Article II Section 1.01 Page 24	
National primary Drinking Water Regulations Implementation	Part 142	General Regulation of Environmental Health Chapter II, Article II Section 1.02 Page 24	
National Secondary Drinking Water Regulations	Part 143	General Regulation of Environmental Health Chapter II, Article II Section 1.03 Page 25	

CONSUMER CONFIDENCE REPORT (CCR) RULE

State Privacy Checklist

Required Program Elements		Revision to State Program (Yes or No)	EPA Findings/ Comments
§ 142.10 (b) (6) (vii)	Authority to require CWSs to provide Consumer Confidence Reports	Yes. See Attorney General's Opinion	

State Reporting and recordkeeping Checklist

Requirement	Are State policies consistent with federal requirements? If not, explain.
§ 142. 16 (f) - Records kept by the States	
§ 142. 16 (f) (2) Each State that has primary enforcement responsibility must make reports submitted to the states in compliance with 40 CFR 141.155 (c) available to the public upon request.	Yes
§ 142. 16 (f) (3) Each State that has primary enforcement responsibility must maintain a copy of the reports for a period of one year.	Yes
§ 142. 16 (f) (3) Each State that has primary enforcement responsibility must keep a copy of the certifications obtained pursuant to 40 CFR 141.155 (c) for a period of 5 years.	Yes
§ 142. 16 (f) (4) Each State that has primary enforcement responsibility must report violations of 40 CFR 141, Subpart O in accordance with the requirements of § 142.15 (a) (1)	Yes
§ 142.15 (a) (1): Each State which has primary enforcement responsibility shall submit quarterly reports to the Administrator on schedule and in a format, prescribed by the Administrator that contains information on violations by PWSs during the previous quarter of State regulations adopted to incorporate the requirements of the NPDWR.	

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY

August 7th, 2000

Administrative Hearing Division
Department of Health

Re: Administrative Order 2000 - 275 - 00
"To Adopt Authority for Administrative Penalties
According to the Safe Drinking Water Act"

Safe Drinking Water Act (SDWA)¹ as amended by Congress in August 6, 1996 (P.L. 104-182)² establishes in Section 1413 (a) (6) – State Primary Enforcement Responsibility, the following:

"has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount-

- (A) in the case of a system serving a population of more than 10,000, that is not less than \$1,000 per day per violation; and
- (B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

The compliance of this federal amendment is pursuant to the requirements established in Section 142.12 of the Title 40 of the Code of Federal Regulation, "to retain primary enforcement responsibility (Primacy) of the SDWA".

¹ 42 USCA 300f et seq.

² 42 USCA 300j-12 (Cum.Sup.1999)

Puerto Rico Department of Health (DOH) administers the Public Water Supply Supervision (PWSS) Program pursuant Section 1413 of the SDWA and the delegation of primary enforcement authority from the Federal Environmental Protection Agency (EPA) since March 1st, 1980.

Act No. 5, approved on July 21, 1977 known as the " Act to Protect the Purity of the Drinking Water of Puerto Rico"³, as amended on December 26, 1997, establishes in Section 9 – Penalties, the following:

"Any person who willfully violates the provisions of Section 7 of this Act, who violates the Regulations promulgated by the Secretary, or who willfully violates or refuses to comply with an order issued by the Secretary, shall be subject to a civil penalty not greater than five thousand dollars (\$ 5,000.00) for each day of such violation or failure to comply with Regulations."

"The Secretary may file a petition for restraining order or injunction to prevent the violation of any order or Regulations issued under this Act. "

Chapter III of the General Rule of Environmental Health of the Department of Health dated February 4, 2000 establishes the following:

"Penalties: The following will be the administrative and criminal penalties applicable to violation to this Regulation in accordance to Article 33 of Act 81 of March 14, 1912 as amended".

Violations to Chapter 2, Article II, Section 1.00 – Drinking Water (1.01 to 1.06) will be no greater than \$5,000.00 per day per violation in accordance to Act No. 5 and Act 170 approved on August 12, 1988 Known as Uniform Administrative Procedure Act.

³ 12 L.P.R.A. Sec. 1551 et seq., Cum Sup.

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Re: Adm. Order 2000 - 275 - 00

In order to comply with this SDWA amendments, it is hereby instructed that from now on, administrative penalties imposed by DOH Hearing Division Officials due to drinking water regulations violations of public water systems serving population of more than 10,000, will be no less than \$1,000.00 dollars per day per violation and no greater than \$5,000.00 per day per violation.

This Administrative Order shall take in effective immediately.



Garrién Feliciano de Molecio
Secretary of Health

Date: August 18, 2000

cc: Jeanne Fox, EPA Region II
Bruce Kiselica, EPA Region II
Carl Soderberg, CEPD
Hernán Horta, DOH
Olga Rivera, DOH

Department of Health
Auxiliary Secretariat of Environmental Health
Public Water Supply Supervision (PWSS) Program

Action Plan for Disasters

Situation	Affected Area	Corrective Activities				Responsibility	Resources
1. Drinking water source contamination	Urban and rural areas	I- Before the disaster				<ul style="list-style-type: none">• Department of Health (DOH) Communication Office• Secretary of Health	PWSS Program will supply educational material to the DOH Communication Office and the Regional Environmental Offices
		A. Educate the public on how to obtain water potable and how to store the water in case of a disaster through available news media.					"How to obtain drinking water in emergencies"
		1. Public is informed to store at least 14 gallons per person for drink, food preparation and hygienic purposes. This amount is adequate for at least two (2) weeks.					"Recommendations on how to clean water tanks and cisterns"
		2. There are two (2) general methods by which water can be effectively disinfected, boiling or chemical treatment.					This information should be distributed through Regional Environmental Health Offices.
		a) Strain water through a clean cloth into a clean containers to remove any sediment or floating matter. Boil the water vigorously, at least three (3) minutes. Allow it to cool. There are several methods to improve the taste: pouring it back and forth from one container to another, allow it stand for a few hours or by adding a small pinch of salt per quarter of water boiled.					
		b) When boiling is not possible, chemical disinfection should be used. Two common chemicals, chlorine and iodine, can be used in the following proportions:					
			Household Chemical	Drops per Gallon Without Treatment	Treated	Stand Time	
			Common Bleach 5.25%	15	8	20 min.	
			Tincture of Iodine 2%	40	20	30 min.	

Situation	Affected Area	Corrective Activities	Responsibility	Resources
		B. Take preventive measures to reduce injuries and/or contamination of water supplies	<ul style="list-style-type: none"> Puerto Rico Aqueduct and Sewer Authority (PRASA) 	Coordination with other agencies, if necessary.
		C. Coordinate with other agencies such as: Civil Defense, Police Department, National Guard, Natural Resources and Environmental Department, Environmental Quality Board, Aqueduct and Sewer Authority, Electric Power Authority, etc. (Attachment 1).	<ul style="list-style-type: none"> PWSS Program Environmental Secretariat PWSS Regional Coordinator 	PWSS Program Regional Environmental Offices
		D. Coordinate with the Department of Health Laboratory to establish arrangements such as: human resources, equipment and supplies available, samples laboratory capability, etc.	<ul style="list-style-type: none"> Environmental Secretariat 	DOH Laboratories (Central and Regional)
		E. Keep a registry of all personnel with address and emergency telephone numbers. (Attachment 2)	<ul style="list-style-type: none"> PWSS Program 	Distribute to all personnel
		F. Keep adequate stock of field analysis equipment and supplies.	<ul style="list-style-type: none"> Environmental Secretariat PWSS Program 	Each region shall maintain their own inventory.
		II. During the disaster		
		A. Keep inform for Civil Defense or Weather Forecast News through all news media.		
		III. After the disaster		
		A. Immediately establish contact between the PWSS Main Office and Regional Environmental Offices (PWSS Coordinators). Use communication media available (telephone, fax, radio-telephone, etc.) The information requested would be the following: <ol style="list-style-type: none"> Public Water Systems damage report. Human Resources, equipment and supplies necessary to make corrective activities. Shelters inventory Monitoring for residual chlorine, bacteriology and chemical analysis. Other relevant information. 	<ul style="list-style-type: none"> PWSS Director Environmental Health Regional Directors PWSS Regional Coordinators 	DOH has state of the art communication system assign to the Auxiliary Secretariat of Medical Emergencies. Also, PRASA has a similar communication system.
		B. A damage inventory and PWS affected will be prepared in cooperation with the system's owner. A follow up actions must be identified to correct deficiencies.	<ul style="list-style-type: none"> PWSS Regional Engineer Coordinators will be responsible of all coordination with PRASA 	PRASA has to prepare this damage report.
		C. Immediately, after the disaster a sampling will be initiated. Distribution systems should be tested for residual chlorine. As soon as possible, bacteriological analysis will be performed by DOH laboratory. Bacteriological sampling shall be taken daily in the distribution certified sampling points until the system is in normal operation. Chemical analysis will be performed if necessary. The samples will be collected by the inspectors in coordination with the PWSS coordinators	<ul style="list-style-type: none"> PWSS Regional Coordinators will be responsible of all sampling by the Environmental Health inspectors. 	The Regional Director must assign an inspector for sampling. Sampling equipment shall be available at each Regional Offices.

Situation	Affected Area	Corrective Activities	Responsibility	Resources
		D. All systems (filtration plants, partial plants, unfiltered, wells) will be inspected. Sampling for residual chlorine and bacteriology shall be performed.	<ul style="list-style-type: none"> PWSS Regional Coordinators 	Environmental Health Officers and inspectors may be used.
		E. Evaluate alternative water source in coordination with system's owner. It shall be: industries, water tanks, rivers, lakes, etc.	<ul style="list-style-type: none"> PRASA 	
		F. All shelters will be inspected and monitored for residual chlorine and bacteriology.	<ul style="list-style-type: none"> Environmental Health Regional Directors PWSS Regional Coordinators 	Environmental Health inspectors
		G. In coordination with PRASA, adequate water quantity will be determine. Water distribution priorities shall be: <ol style="list-style-type: none"> Drinking water Sanitary purposes Fire fighting Industrial and commercial uses 	<ul style="list-style-type: none"> PRASA 	PWSS Regional Coordinators in coordination with PRASA.
2. Absence of drinking water	Urban and rural areas Shelters	I- After the disaster A. Drinking water will be provided by water tank trucks or by alternative drinking water source. A Protocol for delivering water in water tank trucks has been established and shall be follow. (Attachment 3)	<ul style="list-style-type: none"> DOH PRASA 	Coordination with other agencies if necessary. Contact local municipalities if necessary. Environmental Health Officers and Inspectors.
3. Contamination and absence of water in private water systems	Urban and rural areas	I -After the disaster A. See corrective activities in situation #1.	<ul style="list-style-type: none"> DOH Environmental Health Regional Directors 	All human resources of DOH above mentioned, in coordination with previously listed agencies.
1. Contamination of water supply of bottled water and ice making industries.	Islandwide	I -After the disaster A. Plants and source inspections B. Bacteriology sampling as soon as possible	<ul style="list-style-type: none"> DOH Environmental Health Regional Directors 	Environmental Health inspectors

(Unofficial translation)